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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,062	07/21/2003	Jeffrey Hutchinson	RWB-040US1	5170
31344	7590	10/31/2005	EXAMINER	
RATNERPRESTIA			TRAN LIEN, THUY	
P.O. BOX 1596			ART UNIT	PAPER NUMBER
WILMINGTON, DE 19899			1761	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/624,062

Applicant(s)

HUTCHINSON ET AL

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1-9, 11-12 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lonergan et al ( WO 98/30105) in view of Averbach for the same reason set forth in the previous office action.

Claims 13, 14, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lonergan in view of Averbach as applied to claims 1-9, 11-12 and 15-20 above, and further in view of Loh et al. for the same reason set forth in the previous office action.

In the response filed August 22, 2005, applicant argues Lonergan et al teach a process that eliminates the use of a proving step and therefore proven dough and this is in contrast to the claimed invention which requires a proven dough. This argument is not persuasive. The gist of the Lonergan et al teach is to apply the glaze to dough mixture which dough mixture is typically subjected to a frying step; the application of the glaze eliminates the frying step but mimics the organoleptic properties of product that is subjected to a frying step. The dough products that are suitable for use include any dough products in which the organoleptic properties of fried product is desired and doughnuts are disclosed as one of the dough products. The disclosure of doughnuts readily suggests to one skilled in the art both cake donut and yeast raised donuts because those are the two forms of donuts known in the art as pointed out by applicant. When using the glaze, it would have been readily apparent to one skilled in the art to prepare the dough product according to known method in the art. Lonergan et al disclosed formulations of the unbaked dough products are well known and readily available in commercial cookbooks. Thus, when using the glaze on the dough product,

it would have been readily apparent that the formulation and processing parameters of the dough product do not change. The glaze is applied to the surface of the dough product; it is not mixed into the dough. The reference to the proofing step on page 9 more likely refers to additional proofing before baking; the entire disclosure of Lonergan et al clearly indicates that proofing can take place depending on the nature of the dough product. For instance, Lonergan et al disclose on page 5 the dough contains yeast; the presence of yeast indicates that the dough will be proofed. Page 11 discloses a pizza dough containing yeast and page 12 discloses the dough is fermented for 1 hour. Thus, Lonergan et al do not teach against proven dough; whether or not the dough will be proofed depends on the type of dough product made. When using the glaze on a yeast-raised donut, it would have been obvious to proof the dough because that is the conventional way of making the yeast-raised donut.

With respect to the Averbach reference, applicant argues the Averbach teaching is not a process step that is a substitute for the steps required to achieve the desired fried texture. It is not suggested in the rejection to substitute the Averbach teaching steps required to achieve desired fried texture. Lonergan et al already teaches a coating to obtain the desired fried texture. However, it would have been obvious to add the Averbach coating the Lonergan et al product after it is cooked to obtain the moisture protection disclosed by Averbach. This is especially advantageous in donuts because donuts are usually subjected to sugar glazing or chocolate coating. The reference to the cooling step referred to by applicant is the cooling after the fat coating is applied not before the fat coating is applied or while the fat coating is applied. As to

Art Unit: 1761

the time of application, this parameter can change depending on the continuity of the process. It would have been obvious to one skilled in the art to apply the barrier coating as the donuts exist the oven to keep the process continuous and also the coating will more easily melt into the surface of the dough while the donuts are still warm. The time of application is a result-effective variable which is within the determination of one skilled in the art. For example, in a continuous process, one would not leave off applying the coating after the donuts exist the oven because that will break the continuity of the process and causes delay in the production process. Applicant further argues Averbach does not suggest that the fried yeast raised donuts have a first coating. The Averbach reference is not relied upon for such teaching. When the glaze disclosed by Lonergan et al is applied to the donuts, the donuts already have the first coating. Applicant argues the suggesting to combine is lacking because Lonergan et al teach how to make crisp pizzas while Averbach is not remotely interested in making baked donuts taste like fried ones. While Lonergan et al disclose examples of pizza, the disclosure is not limited to pizza as they explicitly disclose other dough products including donuts. Averbach is not used to teach making baked donuts tasted like fried one; Lonergan et al already teach that. The Averbach is used to show why one would be motivated to apply a second fat coating to the already baked donuts. The teachings are explicitly in the references.

Applicant further argues the language "consists essentially of" exclude the other components disclosed in the coatings of Lonergan et al and Averbach. The examiner respectfully disagrees. Section 2111.03 of the MPEP states "for the purposes of

searching for and applying prior art, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are "consisting essentially of" will be construed as equivalent to "comprising". If applicant contends that additional materials in the prior art are excluded by the recitation of "consisting essentially of", applicant has the burden of showing that the introduction of the additional components would materially change the characteristics of applicant's invention.

With respect to the Loh et reference, applicant argues there is no desired to maintain cake donut texture and Loh et al teach away from the claimed process. The basis of applicant's argument is unclear. There is nothing in the claims about maintaining cake donut texture. Lonergan et al teach subject the dough product to baking instead of the traditional frying for such products. The products includes donuts. Loh et al teach baking donuts and they are baked with the injection of steam to obtain certain benefits. It would have been obvious to bake in the presence of steam as taught by Loh et al to obtain the benefits disclosed by Loh et al. Loh et al do not disclose anything about avoiding crisp outside surface that tastes fried. They only disclose preventing undesirable crust formation which might preclude proper expansion and structure formation.

Applicant's arguments filed 8/22/05 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1761

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 28, 2005

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*